



**UNITED STATES DEPARTMENT OF COMMERCE**  
**Office of Legislative and**  
**Intergovernmental Affairs**  
Washington, D.C. 20230

March 26, 2019

The Honorable Elijah E. Cummings  
Chairman  
Committee on Oversight and Reform  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Representative Cummings,

Thank you for the Wednesday, March 20, 2019 email of 7:25 p.m. from your chief counsel. In that email, the chief counsel requested that the Department respond to two inquiries no later than today, Friday, March 22. Although we would normally try to oblige such a request despite the short turnaround time, we have some clarifying questions that must be answered before we can respond. As we have consistently demonstrated, we will continue to work to accommodate the Committee's legitimate oversight interests. This mutual obligation to accommodate is consistent with long-standing judicial precedent, past practices of administrations of all political parties, and numerous opinions of the Department of Justice's Office of Legal Counsel.

Your chief counsel first asked whether the Department will commit to produce in unredacted form each of the eleven documents identified in his March 15 email. As I stated in my March 19 letter, the Department has produced in unredacted form several of the documents your chief counsel asked about: Documents 2, 3, and 5, and the email in Document 6. Moreover, as our privilege log demonstrates, the redactions in Documents 4, 7, and 8 protect the confidentiality of Departmental deliberations on non-Census policy issues, including those related to the National Oceanic and Atmospheric Administration, the International Trade Administration, and the Minority Business Development Administration. We trust that you are not asking us to remove redactions of material that is wholly unrelated and therefore irrelevant to any subject matter about which the Committee has inquired. With these facts in view, the Department has already offered substantial accommodations to the Committee, most notably in its unredacted production of most of the eleven documents your chief counsel identified. Accordingly, his statement "that the Department still has not produced any of the key documents requested by the Committee" is incorrect.

As previously explained, the Department has clearly asserted various bases for withholding some information in Documents 1, 9, 10, 11, and the attachment to Document 6. One such basis is the longstanding executive branch interest in the confidentiality of attorney-client communications. Before we can consider whether there is an accommodation we can provide with respect to such information, we request that you identify the Committee's specific, particularized information needs that you believe cannot be satisfied without access to confidential attorney-client communications.

We also request an identification of the Committee's particularized needs with respect to your chief counsel's request that the Department produce Peter Davidson and James Uthmeier for transcribed interviews. Mr. Davidson is the General Counsel of the Department, and Mr. Uthmeier was his Senior Counsel during the relevant time period. The work of Mr. Davidson and Mr. Uthmeier, of course, generally consists of providing confidential legal advice. All of their non-privileged communications are already contained in the substantial documentary record the Department has been producing to you.

We also request further justification regarding your request for a transcribed interview of Earl Comstock. Mr. Comstock's relevant unredacted communications are in the documentary record, and his seven-hour deposition transcript is publicly-available. Three full-length trials regarding Secretary Ross's decision to reinstate the citizenship question on the census have examined extensively Mr. Comstock's actions and communications. Accordingly, please identify what additional, specific, and particularized information the Committee hopes to obtain by interviewing Mr. Comstock that it believes it cannot access elsewhere in the public domain.

The Department has made substantial efforts to accommodate the Committee's interests. To allow the Department to continue to move forward in this accommodation process, we ask that the Committee provide the above-requested information. We appreciate the opportunity to assist with your inquiry. Please be assured we are working as expeditiously as possible on all of our outstanding Congressional requests. If you have any additional questions, please contact me at (202) 482-3663.

Sincerely,



Ross Branson  
Deputy Assistant Secretary for  
Legislative and Intergovernmental Affairs

Cc: The Honorable Jim Jordan, Ranking Member